UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

LOYALHANNA HEALTH CARE ASSOCIATES

Cases 6–CA–28609 6–CA–28676 6–CA–28676–2

And

CYNTHIA A. CLARK, An Individual ERICA J. LEWIS, An Individual MELANIE M. FRITZ, An Individual

David L. Shepley and Joann F. Dempler, Esqs., for the General Counsel. Michael E. Flaherty and Robert J. Cromer, Esqs. (Karlowitz, Cromer & Flaherty, P.C), Pittsburgh, Pennsylvania, for Respondent.

SUPPLEMENTAL DECISION ON REMAND

ARTHUR J. AMCHAN, Administrative Law Judge. This case is before me pursuant to the Board's Order of September 30, 2006 remanding this matter for further consideration in light of the decisions in *Oakwood Healthcare, Inc.*, 348 NLRB No. 37; *Golden Crest Healthcare Center*, 348 NLRB No. 39 and *Croft Metals, Inc.*, 348 NLRB No. 38. The Board issued these decisions on September 29, 2006, addressing the issues of what "assign," "responsibility to direct" and "independent judgment" mean as used in the definition of "supervisor" in Section 2(11) of the Act. The parties have been accorded the opportunity to reopen the record, which they have declined, and to file briefs on the issues raised in the above-cited cases. Both the General Counsel and Respondent filed briefs regarding the remanded issues.

PROCEDURAL HISTORY AND CHRONOLOGY

November 19, 1996-January 3, 1997: Original charges filed.

February 28, 1997: The General Counsel issues his Complaint.

May 14, 1997: evidentiary hearing before NLRB Administrative Law Judge Irwin Socoloff.

April 7, 1998: Judge Socoloff's decision dismissing the Complaint on the grounds that the three charging parties were "supervisors" pursuant to Section 2(11) of the Act.

October 30, 2000: NLRB decision, (332 NLRB 933) reversing Judge Socoloff on the supervisory issue and ordering Respondent, Loyalhanna Care Center, to offer the three charging parties reinstatement and compensation for any loss of earnings or other benefits resulting from Respondent's violations of Section 8(a)(1).

October 30, 2001: The United States Court of Appeals for the Third Circuit granted the Board's motion to remand this case for reconsideration in light of the decision of the United States Supreme Court in *Kentucky River Community Health Care v. NLRB*, 532 U.S. 706, 121 S.Ct. 1861 (2001).

September 29, 2006: Board decision in *Oakwood Healthcare*, etc.

September 30, 2006: Board order remanding this case.

JD-26-07

February 26, 2007: Assignment to this judge.

February 27, 2007: Order requiring briefs no later than April 6, 2007.

Decision on the Merits

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The remand order does not authorize this judge to evaluate this case on the merits. Thus, I am bound by the factual findings and conclusions of Judge Socoloff and the Board's 2000 decision. To briefly summarize, the factual context of this case is as follows:

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The charging parties were at all material times, registered nurses (RNs) at Respondent's nursing home in Latrobe, Pennsylvania. Their titles were "nurse/manager." On September 25, 1996, one of the charging parties, Cynthia Clark, complained to assistant director of nursing (ADON) Jacqueline Gaydar about being scheduled for work on a Saturday. When Gaydar showed Clark that she had agreed to this assignment, Clark apologized. As the conversation continued, Clark and another of the charging parties, RN Melanie Fritz, complained to Gaydar about wages at Respondent's facility, staffing levels and other working conditions. Charging Party Erica Lewis was present during this discussion.

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The next day, Carol Miller, the director of nursing (DON) fired Clark and disciplined Fritz for being disrespectful towards Gaydar, an allegation which they denied. Gaydar did not testify before Judge Socoloff. Thus, he credited the only first-hand accounts of the September 25 meeting, i.e., that of the charging parties.

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Fritz and Lewis testified on Clark's behalf at an unemployment insurance hearing on November 8, 1996. Respondent disciplined them both immediately afterwards for what Judge Socoloff found were discriminatory reasons. Fritz and Lewis gave Respondent two-week resignation notices on November 11. Respondent discharged Fritz and Lewis almost immediately. Judge Socoloff and the Board found these actions to be discriminatory, as well as Respondent's discharge of Clark and the disciplinary notices issued to all three nurses.

Judge Socoloff's decision and the Board's reversal of that decision

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Section 2(11) of the Act, defines "supervisor" as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." An individual who is a "supervisor" pursuant to Section 2(11) is excluded from the definition of "employee" in Section 2(3) of the Act and therefore does not have the rights accorded to employees by Section 7 of the Act.

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A party seeking to exclude an individual from the category of an "employee" has the burden of establishing supervisory authority. The exercise of independent judgment with respect to any one of the factors set forth in section 2(11) establishes that an individual is a supervisor. However, not all decision-making constitutes the independent judgment necessary to establish that an individual is a statutory supervisor.

Judge Socoloff found that all three charging parties were supervisors on the grounds that they responsibly assigned and directed Respondent's nurses' aides, called aides in for work and allowed them to take time off. The Board reversed the Judge, relying at least in part on its decision in *Providence Hospital*, 320 NLRB 717, 720 (1996). In *Providence Hospital*, the Board stated that "Section 2(11) supervisory authority does not include the authority of an employee to direct another to perform discrete tasks stemming from the directing employee's experience, skills, training or position..." The *Providence Hospital* rationale was explicitly rejected by the U.S. Supreme Court in *Kentucky River*, 121 S.Ct. 1868 n. 1.

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The Board also concluded that the charging parties did not have to use independent judgment in calling employees in for work, releasing employees from work early, requiring them to stay at work beyond the end of their shift, or in assigning work to the aides, *Loyalhanna Care Center*, 332 NLRB 933, 935-36 (2000).

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Facts bearing on whether or not the charging parties were "supervisors" pursuant to Section 2(11) of the Act.

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In the Fall of 1996/ Spring of 1997, Respondent operated a 116-120 bed facility. This included a unit for skilled nursing care, rehabilitation nursing services, respite care and an Alzheimer unit. Loyalhanna employed about 120 individuals, including about 20 registered nurses (RNs), 8 licensed practical nurses (LPNs) and 45-50 certified and uncertified nursing assistants. Overseeing the nursing staff were three individuals, who all parties deemed to be statutory supervisors, DON Carol Miller; ADON Jacqueline Gaydar and Resident Care Coordinator Jeanette Ream.

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Residents needing more skilled nursing care lived in the North wing of the building; those needing less skilled care were quartered in the South wing. In May 1997, there were about 55 residents living in each wing. The North wing was generally staffed by RNs working with nurses' aides; the South wing was generally staffed by LPNs working with nurses' aides. The North wing had two hallways or corridors; generally one RN serviced one corridor and another serviced the second. Both staff RNs and staff LPNs held the title of "nurse/manager."

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Nurses were assigned to four shifts: 7:00 a.m. - 3:30 p.m.; a floating shift 8-4; a 3-11:30 p.m. shift and an 11:00 p.m. to 7:30 a.m. shift. By state law, a RN must be at the facility at all times.

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Direction of lower rank employees

The job description signed by each of the charging parties' states that part of their main duties and responsibilities is to review and interpret work performance against accepted standards, R. Exh. 2. The job description does not indicate whose work performance is to be reviewed and interpreted and there is no evidence that this sentence in the job description was ever explained to the charging parties. However, DON Miller testified that that it means that the RNs are responsible for making sure that the care rendered by the aides, LPNs and other employees are delivered in an safe and efficient way. In Clark's April 1996 performance review, one of her major strengths was described as the fact that she is "confident and can take charge of subordinates."

A job description for a nurse's aide, signed in July 1995 by Charging Party Clark, states that an aide is to "perform assigned duties at the direction and under the supervision of the Nurse Manager." It also more specifically states that a nurse's aide "performs nursing procedures as directed by the nurse manager, i.e., specimen collection, intake and output observation and recording, bladder and bowel training, vital signs, weight, etc."

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The charging parties were responsible for assuring that the aides had the side rails up on the residents' beds and that the aides made sure that each resident had easy access to a call button.

Discipline of other employees

The charging parties' job descriptions also state that they have the ability to reprimand and/or discipline personnel. The record, however, contains no evidence that any of the charging parties ever did more than record the facts of alleged misconduct by other employees on Respondent's employee warning report form. They neither administered discipline nor recommended whether and/or to what extent any other employee should be disciplined. While DON Miller testified that she generally follows the RN/nurse manager's recommendations regarding discipline, she gave no specific examples as to when she had done so. Indeed, Miller's very generalized testimony indicates that in administering discipline she gives considerable weight to factors other than a nurse manager's recommendation. She also testified that the LPNs have the same disciplinary authority as RNs.

The only evidence in this record of an RN administering discipline is Miller's testimony that at some unspecified time in the past she, as an RN/nurse manager, had sent an LPN home and called in a replacement because the LPN had left Respondent's facility during her shift to eat. She apparently did so without checking first with higher authority. Respondent's employee handbook states that "leaving the premises during working hours" is unacceptable conduct for which an employee may be disciplined. There is no evidence in this record as to whether the offending LPN was paid for the hours after Miller sent her home or whether or not she was disciplined in any other manner. There is also no evidence as to whether Miller was authorized to take such action.

Assignment of other employees

Jennifer Ream, Respondent's Resident Care Coordinator, assigned both nurses and aides to the dates, the shifts and the wings on which they would work. The nurse managers could allocate work loads for an aide in situations such as one in which fewer aides showed up for work than were scheduled. Also, if an LPN called in to say he or she was not coming to work, a RN/nurse manager would go to a telephone list to procure a replacement. However, if the replacement employee would be working overtime, the nurse manager was required to get approval from higher management.

Ream also assigned break periods to LPNs and aides. A RN/nurse manager could alter this schedule if necessary due to emergencies or the volume of work. On the night shift and

most of the 3-11 shift, when neither Miller, Gaydar nor Ream were at the facility, the RNs were the highest ranking individuals present at Respondent's nursing home.¹

Judge Socoloff found that, "the registered nurses can, in the exercise of their discretion, permit early dismissal of other employees, for example, in the case of illness or family emergency." The Board did not disturb this finding in its 2000 decision. However, I note that the evidence of record on this point, appears, as argued by the General Counsel at page 14 of his brief, to consist of "purely conclusory evidence," which the Board found in *Golden Crest* to be insufficient to establish supervisory status, *slip opinion at page 5*.

At transcript page 143, Respondent's counsel elicited the following testimony from DON Miller:

Q. Do RNs have the authority to permit early dismissal of subordinates? I am talking about LPNs and nurse's aides?

A. Yes, they do.

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Q. For what reason?

A. Frequently, if they—another employee becomes ill on their shift, the RNs are the ones that have the ultimate say if it's an on shift to release them to go ahead and go home. We have had cases where families have called in, there is a family emergency at home, the RNs have released that person from work at that point in time.

Miller gave no specific examples as to when this occurred and there are no provisions either in Respondent's employee handbook or in the nurse manager's job description that gives nurse managers such authority. There is also no evidence that any of the charging parties were told that they had authority to excuse an employee before or during a shift without seeking approval from Miller, Gaydar or Ream. Moreover, Respondent's employee handbook, GC Exh. 2 at page 5 suggests that it is each employee's responsibility to find a suitable replacement if they are not able to work their assigned shift.

The nurse managers would on occasion direct an aide to answer a resident's call button and remind them to be certain that a resident's side rails were raised. Aides were to notify the nurse manager if a resident had a temperature in excess of 99 degrees. Nurse Managers could assign an aide to do a task, such as bathing a resident, in place of the aide assigned to a resident, if the assigned aide could not perform the task.²

While discussing workloads on September 25, 1996, ADON Gaydar informed charging parties Clark and Fritz that if they needed help in the North wing, they could require an LPN from the South wing to assist them and that it was their duty to do so. Clark and Fritz responded that the LPNs in the South wing simply ignored their requests for assistance due to their own workload.

¹ Nothing in the statutory definition of "supervisor" suggests that service as the highest ranking employee on site requires finding that such an employee must be a statutory supervisor, *Training School at Vineland*, 332 NLRB 1412 (2000).

² There is no evidence that this ever happened. This finding is predicated on Erica Lewis' answer to a hypothetical question from Respondent's counsel.

JD-26-07

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Application of the Oakwood Healthcare, Croft Metals and Golden Crest decisions to the facts of this case.

In *Oakwood Healthcare*, at page 9 of the slip opinion, the Board reaffirmed the principle that the "burden of proving supervisory status rests on the party asserting that such status exists." Respondent has failed to meet its burden of proof in this case.

Responsibility to Direct

The Board in *Oakwood Healthcare* stated that to meet the criteria for "supervisor' based on the ability to responsibly direct employees, an individual must be accountable for the performance of the task by the other person, such that some adverse consequence must befall the one providing the oversight if the task performed by the employee is not performed properly. The fact that Charging Party Clark was rated on her ability to "take charge of subordinates" in her 1996 performance review does not establish that she or any other nurse manager was a supervisor. In order to establish her supervisory status on this basis, Respondent would also have to establish that some adverse consequence could befall a nurse manager from a poor rating in this respect, or that a positive consequence of favorable rating would result, *Golden Crest Healthcare Center*, slip opinion at page 5.

Focusing solely on the accountability factor, there is no direct evidence that any RN/nurse manager was disciplined by Respondent because a nurse's aide did not perform a task. However, it is almost axiomatic that if an aide doesn't answer a call button, bathe a patient, etc., the nurse on that corridor is going to be held accountable—unless the nurse gets somebody else to perform the task in a timely fashion.

The Board in *Oakwood* also stated that, "the concept of accountability creates a clear distinction between those employees whose interests, in directing other employees' tasks, align with management from those whose interests, in directing other employees, is simply the completion of a certain task." This test is extremely difficult to apply in the abstract. In directing an aide to answer a call button, the nurse obviously is mainly concerned with the completion of the task, but is also acting in the interests of management, who would dearly like to avoid getting complaints from the resident's family.

In *Oakwood* and *Golden Crest*, the Board found that the employer had not demonstrated that its charge nurses were held accountable for the job performance of others, i.e., no evidence that charge nurses must take corrective action if other staff members fail to complete a task and no evidence that that charge nurses are subject to discipline if other staff members fail to perform specific tasks. Particularly in the nursing home context, where RNs and LPNs typically work in conjunction with nurses' aides, it is hard to imagine a situation in which competent counsel, after reading these opinions, would be unable to establish that any RN or LPN in a nursing home had the ability to responsibly direct the aides working with them.

Employer's counsel, wishing to establish supervisory status, will certainly not elicit the kind of testimony counsel elicited in *Golden Crest*, i.e., that the ADON instructed nurses that they are not allowed, under any circumstances, to send aides home early, that the ADON reprimanded a nurse who sent an intoxicated aide home or that RNs were prohibited from

JD-26-07

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requiring LPNs or aides to help them under any circumstances. In fact, one can rest assured that competent counsel will be able to elicit testimony to the contrary.

If a resident was to fall out of bed because an aide failed to raise the guardrails and the resident's family complains to the nursing home or threatens to file a lawsuit, it is highly unlikely that the RN or LPN responsible for the resident will be able to avoid responsibility by blaming the aide. Any competent attorney representing a nursing home should be able to elicit testimony from its witnesses that adverse consequences would befall an RN or LPN in such a situation. I conclude that the charging parties Clark, Fritz and Lewis had the ability to responsibly direct the nurses' aides who worked in their wing of Respondent's nursing home. I do so because I draw an inference that had an aide failed to raise a patient's bedrails, as directed by one of the charging parties, that RN/nurse manager may have suffered an adverse personnel action. The next issue to consider is whether they had to exercise independent judgment in doing so.

Independent Judgment

The Board in *Oakwood*, citing the Supreme Court decision in *Kentucky River*, stated that it must assess the degree of discretion exercised by a individual in determining whether they fall into the section 2(11) category of "supervisor." The Board stated the individual's judgment must involve a degree of discretion that rises above the "routine or clerical." In order to be a statutory supervisor, an employee must make decisions that are more than "routine or clerical" with regard to one or more of the statutory indicia of supervisory status. These indicia concern an individual's relationship to employees; not to patients, residents, customers or clients. Thus, a RN's decision to call a physician because of a resident's condition, even though it may be more than routine, has nothing to do with the issue of whether or not that nurse is, or is not, a section 2(11) supervisor.3

In the *Oakwood* decision, at slip opinion pages 8-9, the Board stated that, "if there is only one obvious and self-evident choice," an individual is not exercising the degree of discretion that qualifies one as a "supervisor." The Board gave an example of such a routine or clerical decision: one in which a charge nurse assigns the one available nurse fluent in American Sign Language (ASL) to a patient dependent on ASL. At page 11, the Board describes the assignment of a nurse who is particularly good at peritoneal dialysis to a patient who requires such treatment as an example of a non routine or non-clerical decision. It seems to me that both decisions are obvious and self-evident. In these situations, any rational person would assign the nurse with special expertise to the patient needing their expertise—unless there was some other countervailing consideration. In any health care context, an RN might, for example, decide to assign a Spanish-speaking employee to assist in the care of a Spanish-speaking patient. If such a decision is not deemed "routine or clerical," virtually every RN or LPN, and most certainly those working in nursing homes fall within the definition of "supervisor" in section 2(11).

³ Respondent's brief at page 5 recognizes this principle. However, at page 7, Respondent relies on a nurse's authority to decide whether to summon a physician or send a patient to the hospital, in support of its argument that the charging parties were supervisors.

The record herein does not reflect sufficient discretion on the part of RNs who were "nurse managers" in assigning and directing LPNs and/or aides to establish their supervisory status. What the record shows is that "nurse managers" assign and direct aides to perform tasks that are routinely and necessarily performed in any nursing home. Moreover, the record fails to indicate any significant degree of discretion in the nurse manager's selection of an aide to perform a task or in the instructions given by the nurse to the aide as to how to perform any particular task.

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To the extent the RN nurse managers reassigned aides during a shift, the record establishes only that they did so solely on the basis of the quantity of work. Such determinations do not involve the exercise of independent judgment, *Oakwood Healthcare*, slip opinion at page 12.

Similarly, assuming that this record supports a finding that the charging parties had such authority, their ability to allow employees to leave early in the event of illness or a family crisis does not require the exercise of sufficient independent judgment to make them "supervisors," *K.W. Elec. Inc. & Int'l Brotherhood of Electrical Workers*, 342 NLRB, 1231, 1235-36 (2004); *Eventide South*, 239 NLRB 287, 288 (1989); *Jochims v. NLRB*, No. 05-1455, 2007 WL 860854 (D.C. Cir. March 23, 2007) reversing *Wilshire at Lakewood*, 345 NLRB No. 80 (2005).

While it is true that the nurse/managers do not recommend how an aide, LPN or even another RN should be disciplined, the decision as to whether to inform higher level management as to another individual's misconduct, may require a bit of discretion. Nevertheless, Board law is quite clear unless the putative supervisor's actions result in an adverse personnel action without independent investigation or review by other supervisors, his or her recommendation or report is an insufficient grounds on which to find supervisory status, *Phelps Community Medical Center*, 295 NLRB 486,490 (1989); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996); *Jochims v. NLRB*, supra.

Assign⁴

In *Oakwood Healthcare* the Board stated that to meet the criteria for "supervisor' based on an individual's authority to "assign" other employees, an individual must designate the overall duties of an employee, not simply give ad hoc instructions to an employee to perform a discrete task. On this record, it is clear that the charging parties are not "supervisors" due to their ability to assign other employees. To the extent that they did anything other than assign nurse's aides discrete tasks, they did not exercise independent judgment. To the extent that they called

⁴ Pursuant to *Oakwood Healthcare*, the party seeking to establish supervisory status does not have to prove that a putative supervisor may be held accountable for decisions made in assigning employees, whereas this is an element of establishing an individual's supervisory status on the basis of his or her ability to "responsibly direct" the work of others. It seems logical to this judge, that if one must be accountable for the direction of other individuals to be a "supervisor," they must also be held accountable for decisions made in assigning others. Thus, if a putative supervisor is subject to discipline for failing to assign a nurse with expertise in dialysis to a patient undergoing dialysis, it seems to me that this person ought to be deemed to be a supervisor and should not be deemed to be a "supervisor" if there are no consequences for his or her decisions in making assignments.

employees in to replace absentees, their function was routine or clerical. To the extent they allowed sick employees or those with families emergencies to leave work early, the nurse manager was simply selecting an obvious or self-evident course of action.

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Like the employer in *Golden Crest Healthcare Center*, Respondent herein has failed to establish that the nurse managers have the ability to require that an off-duty RN, aide or LPN come into work to replace another employee who failed to show up. There is no evidence that an aide, for example, has ever been disciplined for refusing a nurse manager's "request or order" that they come into work when not scheduled. Likewise, the nurse manager's "authority" to require LPNs in the South wing was nominal, rather than genuine authority. This is established by the fact that LPNs felt free to ignore such requests/orders without any adverse consequences.

Authority to discipline employees

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The Board's remand order did not encompass consideration of whether or not the charging parties were supervisors on the basis of their alleged authority to discipline employees. However, Respondent at page 8 of its statement of position (or brief), appears to continue to rely on this alleged authority to establish the supervisory status of the RN/nurse managers.

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Although the charging parties' job descriptions stated that they had the ability to reprimand and/or discipline personnel, Respondent has not established that they were supervisors on this basis. The Board insists on evidence supporting a finding of actual authority, as opposed to mere paper authority, *Golden Crest*, slip opinion at page 5; *Training School at Vineland*, 332 NLRB 1412, 1416 (2000). DON Miller's testimony concerning one incident at some unspecified time in the past, in which she, as a nurse manager, sent an LPN home before the end of her shift falls short of establishing that the charging parties had such authority. It is not even clear that Miller administered discipline in this case. Moreover, the charging parties were never told they had authority to discipline employees, other than on paper, and never exercised such authority.

Conclusion of Law

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I conclude that Respondent has not established that the charging parties were "supervisors" within the meaning of section 2(11) of the Act. Therefore, Respondent violated Section 8(a)(1) in discharging them and disciplining them in the Fall of 1996, as found by the Board in its 2000 decision.

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Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended5

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⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. Continued

ORDER

The Respondent, Loyalhanna Health Care Associates, t/d/b/a Loyalhanna Care Center, Latrobe, Pennsylvania, its officers, agents, successors, and assigns, shall:

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1. Cease and desist from

concerted activities.

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(a) Threatening employees with the loss of their registered nursing licenses because they engage in protected concerted activities.

(b) Issuing disciplinary warnings to employees because they engage in protected

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(c) Discharging employees because they engage in protected concerted activities.

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(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Within 14 days from the date of this Order offer Cynthia A. Clark, Erica J. Lewis, and Melanie M. Fritz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, with interest.

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(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline of Erica J. Lewis and Melanie M. Fritz, and the unlawful discharges of Cynthia A. Clark, Erica J. Lewis, and Melanie M. Fritz, and within 3 days thereafter notify the employees in writing that this has been done and that the discipline and discharges will not be used against them in any way.

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(c) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

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(d) Within 14 days after service by the Region, post at its Latrobe, Pennsylvania facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized

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102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 26, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 16, 2007.

Arthur J. Amchan

Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with the loss of their nursing licenses for engaging in protected concerted activities.

WE WILL NOT warn or otherwise discipline employees for engaging in protected concerted activities.

WE WILL NOT discharge employees for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed employees by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Cynthia A. Clark, Erica J. Lewis, and Melanie M. Fritz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Cynthia A. Clark, Erica J. Lewis, and Melanie M. Fritz whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, plus interest, in the manner set forth in the Board's decision.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful disciplinary warnings issued to Erica J. Lewis and Melanie M. Fritz, and to the unlawful discharges of Cynthia A. Clark, Erica J. Lewis, and Melanie M. Fritz, and

WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the disciplinary warnings and discharges will not be used against them in any way.

	_	LOYALHANNA HEATH CARE ASSOCIATES		
	(Employer)			
Dated	Ву			
		(Representative)	(Title)	

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1000 Liberty Avenue, Federal Building, Room 1501 Pittsburgh, Pennsylvania 15222-4173 Hours: 8:30 a.m. to 5 p.m. 412-395-4400.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 412-395-6899.